

HOUSE BILL NO. 778

INTRODUCED BY J. MUSGROVE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA HYDROELECTRIC SECURITY ACT;
5 GENERALLY REVISING LAWS RELATED TO ELECTRICAL ENERGY; ESTABLISHING THE MONTANA
6 PUBLIC POWER COMMISSION; PROVIDING THE COMMISSION WITH POWERS AND DUTIES;
7 CLARIFYING THAT A PERSON EMPLOYED BY A HYDROELECTRIC FACILITY ACQUIRED BY THE STATE
8 OF MONTANA IS ENTITLED TO ALL RIGHTS THAT THE PERSON POSSESSED AS AN EMPLOYEE
9 BEFORE THE OWNERSHIP OF THE FACILITY WAS TRANSFERRED TO THE STATE; CREATING A
10 SPECIAL REVENUE ACCOUNT; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS
11 FOR THE FINANCING AND PURCHASE OF HYDROELECTRIC FACILITIES; ESTABLISHING PROCEDURES
12 AND REQUIREMENTS RELATED TO ISSUANCE OF THE BONDS; STATUTORILY APPROPRIATING MONEY
13 FROM THE WHOLESALE ENERGY TRANSACTION TAX TO THE COMMISSION TO SUPPORT ITS
14 ACTIVITIES; AMENDING SECTIONS 15-72-106 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE
15 DATE."

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "Montana
20 Hydroelectric Security Act".

21
22 NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 16] is to acquire
23 hydroelectric facilities for which acquisition by the state of Montana would be in the public interest and to operate
24 them for the benefit of the people of Montana.

25
26 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 16], the following definitions
27 apply:

28 (1) "Bonds" means revenue bonds, notes, or other evidences of indebtedness issued pursuant to
29 [sections 8 through 16] as hydroelectric facility revenue bonds.

30 (2) "Commission" means the Montana public power commission created in [section 4].

1 (3) "Hydroelectric facilities" means dams with an installed electrical generation capacity of greater than
2 5 megawatts that are located in the state and associated real and personal property, equipment, contract rights,
3 easements, and water rights.

4
5 **NEW SECTION. Section 4. Montana public power commission -- composition -- compensation.**

6 (1) (a) There is a Montana public power commission that consists of five members.

7 (b) Each commission member must be elected and must be a qualified elector from the district from
8 which the member is elected. Each member must be from a separate district of the state. The districts must
9 correspond to the districts for members of the public service commission as provided for in 69-1-104.

10 (c) Each commission member shall take office on the first Monday of January after the election. Each
11 commission member shall serve a 4-year term. Terms must be staggered, with two members serving an initial
12 term of 2 years. The members who are elected shall draw by lot to determine their terms of office.

13 (2) For each day that a member is engaged in the business of the commission, the member is entitled
14 to:

15 (a) a salary commensurate to that of an entry grade 18 state employee;

16 (b) the mileage allowance as provided in 2-18-503; and

17 (c) expenses as provided in 2-18-501 and 2-18-502.

18 (3) Members of the commission may participate in the state employees benefits group plan and public
19 retirement system under the same conditions as a member of the legislature as provided in 5-2-303 and 5-2-304.

20 (4) The commission is attached to the department of natural resources and conservation for
21 administrative purposes, and the department shall provide staff support and a liaison between the commission
22 and other state or federal agencies.

23
24 **NEW SECTION. Section 5. Powers and duties.** (1) The commission shall conduct an assessment
25 of existing hydroelectric facilities and determine those for which acquisition by the state of Montana would be
26 in the public interest. In determining the public interest, the commission shall consider:

27 (a) the condition of the facility;

28 (b) the estimated cost of the facility;

29 (c) the estimated cost of maintaining, repairing, and operating the facility;

30 (d) the debt burden to be serviced;

- 1 (e) the revenue expected to be derived; and
2 (f) the value of avoided risk in power markets.
- 3 (2) For a hydroelectric facility for which the commission determines that the acquisition would be in the
4 public interest, the commission shall:
- 5 (a) purchase the hydroelectric facility at fair market value;
6 (b) if necessary, use the power of eminent domain to acquire the hydroelectric facility at fair market
7 value;
8 (c) enter contracts to manage and operate the hydroelectric facility, to provide marketing services, or
9 to provide other services;
10 (d) sell electrical energy at a retail or wholesale level, provided that customers who reside in an area
11 that was served by an investor-owned utility with its entire service territory in the state of Montana prior to
12 January 1, 1997, and customers with an average individual metered demand of less than 1 megawatt have
13 priority;
14 (e) utilize proceeds from the issuance and sale of revenue bonds by the board of examiners in order
15 to purchase or otherwise acquire investments in hydroelectric facilities and to implement this section; and
16 (f) reimburse any loss of revenue to any taxing unit, as defined in 15-1-101, associated with the
17 acquisition of any hydroelectric facility. Reimbursement of local governments must be implemented as provided
18 by law.
- 19 (3) The commission may invest revenue from the sale of electricity in renewable energy development
20 and energy conservation programs as defined in 90-4-602.
- 21 (4) The commission has all powers necessary to carry out the duties provided for in [sections 1 through
22 16].
23

24 **NEW SECTION. Section 6. Rights of employees of hydroelectric facilities.** Each person employed
25 by a hydroelectric facility acquired by the state of Montana under [section 5] is entitled to all rights that the person
26 possessed as an employee before the ownership of the facility was transferred to the state.
27

28 **NEW SECTION. Section 7. Funding -- special revenue account.** (1) There is a Montana public power
29 commission special revenue account within the state special revenue fund established in 17-2-102.

30 (2) A portion of the revenue derived from the wholesale energy transaction tax must be deposited into

1 this account pursuant to 15-72-106.

2 (3) The revenue received under this section must be used to:

3 (a) meet the administrative costs of the commission; and

4 (b) supplement, to the extent possible, the commission's other financial offers, incentives, and
5 endeavors pursuant to [sections 1 through 16].

6 (4) The money in the account is statutorily appropriated, as provided in 17-7-502, to the commission.

7

8 **NEW SECTION. Section 8. Bond authorization -- payment of principal and interest.** (1) The board
9 of examiners may issue and sell bonds of the state in an aggregate principal amount not to exceed \$500 million
10 outstanding at any time for the purposes of financing hydroelectric facilities as enumerated in [section 5]. The
11 bonds are revenue obligations in which the net revenue from facility charges is pledged for payment of the
12 principal and interest on the bonds. Additional bonds, other than refunding bonds, may not be issued until the
13 pledge in favor of the bonds is satisfied and discharged.

14 (2) The proceeds of the bonds, other than any premiums and accrued interest received, must be
15 deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited
16 in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to
17 pay the costs of issuing the bonds and to fulfill the purposes authorized in [section 5]. For the purposes of
18 17-5-803 and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available
19 to the Montana public power commission and may be used for the purposes authorized in [section 5] without
20 further budgetary authorization.

21 (3) In authorizing the sale and issuance of the bonds, the board of examiners, upon request of the
22 commission, may create separate accounts or subaccounts to provide for the payment and security of the bonds,
23 including a debt service reserve account. The net revenue from facility charges must be pledged to these
24 accounts.

25

26 **NEW SECTION. Section 9. Use of bond proceeds.** The Montana public power commission shall use
27 the proceeds of the bonds authorized in [section 8] to finance and build hydroelectric facilities, to carry out the
28 powers and duties enumerated in [section 5], to pay capitalized interest during construction, to fund a debt
29 service reserve, and to pay costs associated with the sale and security of the bonds. The commission may not
30 acquire a hydroelectric facility that is associated with a superfund project.

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2 **NEW SECTION. Section 10. Bond anticipation notes -- when issued -- principal and interest.** (1)
3 The board of examiners may, pending the issuance of bonds under [sections 1 through 16], issue temporary
4 notes in anticipation of the proceeds to be derived from the sale of the bonds, designated as "bond anticipation
5 notes". The proceeds of the sale of the bond anticipation notes may be used only for the purpose for which the
6 proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it
7 becomes necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued
8 to redeem the outstanding notes. A renewal of any note may not be issued after the sale of bonds in anticipation
9 of which the original notes were issued.

10 (2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3
11 years after the date of issue may be issued from time to time as the proceeds of the notes are needed. The
12 notes must be authorized by the board of examiners and have terms and provisions as may be provided by
13 resolution of the board. However, each resolution of the board authorizing notes must:

14 (a) describe the need for the proceeds of the notes to be issued; and
15 (b) specify the principal amount of the notes or maximum principal amount of the notes that may be
16 outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula of
17 the notes to be determined in the manner specified in the resolution authorizing the notes, and the maturity date
18 or maximum maturity date of the notes.

19 (3) Subject to the limitations contained in this section and the standards and limitations prescribed in
20 the authorizing resolution, the board of examiners, in its discretion, may provide for the notes described in
21 subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state
22 treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the
23 rate or rates of interest, and other terms and details of the notes that may be considered appropriate by the
24 board or, if there has been a delegation, by the state treasurer. The board may, in its discretion but subject to
25 the limitations contained in this section, provide in the resolution authorizing the issuance of notes for:

26 (a) the employment of one or more persons or firms to assist the board in the sale of the notes;
27 (b) the appointment of one or more banks or trust companies, either inside or outside the state, as
28 depository for safekeeping and as agent for the delivery and payment of the notes;
29 (c) the refunding of the notes, from time to time, without further action by the board, unless and until the
30 board revokes the authority to refund; and

1 (d) other terms and conditions as the board may consider appropriate.

2

3 **NEW SECTION. Section 11. Form -- principal and interest -- fiscal agent.** (1) Each series of
4 hydroelectric facility revenue bonds may be issued by the board of examiners at public or private sale, in
5 denominations and form, whether payable to the bearer or registered as to principal or both principal and
6 interest, with provisions for the conversion or exchange, bearing interest at a rate or rates or the method of
7 determining the rate or rates, maturing at times, not more than 40 years from the date of issue, subject to
8 redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state
9 as the board shall determine, subject to the limitations contained in [sections 1 through 16]. Any action taken
10 by the board under [sections 1 through 16] must be approved by a majority vote of its members.

11 (2) In all other respects, the board of examiners is authorized to prescribe the form and terms of the
12 bonds and shall do whatever is lawful and necessary for their issuance and payment.

13 (3) Bonds must be signed by the members of the board of examiners. The bonds may be executed with
14 facsimile signatures.

15 (4) The board of examiners may employ a fiscal agent and a bond registrar and transfer agent to assist
16 in the performance of its duties under [sections 1 through 16].

17 (5) In connection with the issuance and sale of bonds, the board of examiners may arrange for lines
18 of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of
19 repayment for bonds issued pursuant to [sections 1 through 16]. Amounts drawn on lines of credit may be
20 evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing terms and
21 conditions that the board may authorize in the resolution approving the notes.

22

23 **NEW SECTION. Section 12. Trust indenture.** In the discretion of the board of examiners, bonds
24 issued under [sections 1 through 16] may be secured by a trust indenture by and between the board and a
25 trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the
26 state.

27

28 **NEW SECTION. Section 13. Negotiability of bonds.** Bonds issued under [sections 1 through 16] are
29 negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of
30 bonds.

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2 NEW SECTION. **Section 14. Signatures of board members.** If any member of the board of
3 examiners whose signature appears on bonds or coupons issued under [sections 1 through 16] ceases to be
4 a member before the delivery of the bonds, the member's signature is valid and sufficient for all purposes as if
5 the member had remained in office until delivery.

6

7 NEW SECTION. **Section 15. Refunding bonds.** (1) The board of examiners may provide for the
8 issuance of refunding bonds for refunding any bonds then outstanding that have been issued under [sections
9 1 through 16], including the payment of any redemption premium and any interest accrued or to accrue to the
10 date of redemption of the obligations. The issuance of refunding bonds, the maturities and other details, the
11 rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate
12 provisions of [sections 1 through 16] that relate to the issuance of the bonds.

13 (2) Refunding bonds issued as provided in subsection (1) may be sold or exchanged for outstanding
14 bonds issued under [sections 1 through 16]. The proceeds may be applied to the purchase, redemption, or
15 payment of the outstanding bonds. Pending the application of the proceeds of refunding bonds, with other
16 available funds, to the payment of principal, accrued interest, and any redemption premium on the bonds being
17 refunded and, if permitted in the resolution authorizing the issuance of the refunding bonds or in the trust
18 agreement securing them, to the payment of interest on refunding bonds and expenses in connection with
19 refunding, the proceeds may be invested as provided in Title 17, chapter 6.

20

21 NEW SECTION. **Section 16. Tax exemption of bonds -- legal investments.** (1) All bonds issued
22 under [sections 1 through 16], their transfer, and their income, including any profits made on their sale, are
23 exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for
24 estate taxes.

25 (2) Bonds issued under [sections 1 through 16] are legal investments for any person or board charged
26 with investment of public funds and are acceptable as security for any deposit of public money.

27

28 **Section 17.** Section 15-72-106, MCA, is amended to read:

29 **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A
30 transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax

1 collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by
2 15-72-104, both the tax and the excess must be remitted to the department.

3 (2) A self-assessing distribution services provider is subject to the provisions of this part.

4 (3) The Except as provided in subsection (4), the wholesale energy transaction tax collected under this
5 part must be deposited in the general fund.

6 (4) Beginning January 1, 2007, an amount sufficient to fund the activities of the Montana public power
7 commission established in [section 4], as determined by the commission, but not to exceed \$350,000 each year,
8 of the wholesale energy transaction tax collected under this part, must be deposited annually in the state special
9 revenue account provided for in [section 7]."

10

11 **Section 18.** Section 17-7-502, MCA, is amended to read:

12 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
13 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
14 the need for a biennial legislative appropriation or budget amendment.

15 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
16 of the following provisions:

17 (a) The law containing the statutory authority must be listed in subsection (3).

18 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
19 appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;
21 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706;
22 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222;
23 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305;
24 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612;
25 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623;
26 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; [section 7]; 75-1-1101; 75-5-1108; 75-6-214;
27 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and
28 90-9-306.

29 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
30 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued

1 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
2 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
3 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
4 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
5 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,
6 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
7 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
8 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion
9 of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.
10 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003,
11 the inclusion of 2-15-151 terminates June 30, 2005.)"

12

13 **NEW SECTION. Section 19. Codification instruction.** [Sections 1 through 16] are intended to be
14 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 16].

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16 **NEW SECTION. Section 20. Saving clause.** [This act] does not affect rights and duties that matured,
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18

19 **NEW SECTION. Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
21 the part remains in effect in all valid applications that are severable from the invalid applications.

22

23 **NEW SECTION. Section 22. Effective date.** [This act] is effective July 1, 2005.

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